

Message Text

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FM AMEMBASSY BONN

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INFO USMISSION USBERLIN

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C O N F I D E N T I A L SECTION 01 OF 03 BONN 20484

FOR EUR/CE

E.O. 11652: GDS

TAGS: PFOR PGOV EEC WB GW US UK FR UR

SUBJECT: BERLIN AND THE EC: SOVIET PROTEST OF
NOVEMBER 16

REFS: (A) BONN 20379; (B) MOSCOW 18075

BEGIN SUMMARY. WORKING FROM A REVISED DRAFT, THE
BONN GROUP GAVE FURTHER CONSIDERATION TO A POSSIBLE
LONG-FORM REPLY TO THE SOVIET DEMARCH OF NOVEMBER 16.

THE UK DOES NOT BELIEVE IT DESIRABLE FOR THE REPLY TO
BE CONSIDERED AT THE SENIOR LEVEL MEETING, WHILE THE
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FRG REP CONTINUES TO BELIEVE SENIOR OFFICIALS

SHOULD HAVE A TEXT TO LOOK AT. THE REVISED DRAFT, WHICH STILL HAS NO STANDING, IS REPORTED BELOW, FOR POSSIBLE INCLUSION IN BRIEFING BOOKS FOR THE US DELEGATION TO THE QUADRIPARTITE MEETING. END SUMMARY.

1. HITCH (UK) INFORMED THE BONN GROUP ON DECEMBER 3 THAT HE HAD RECEIVED "FIRM INSTRUCTIONS" THAT THE END RESULT OF THE CURRENT ATTEMPT TO WORK OUT A REPLY TO THE NOVEMBER 16 SOVIET PROTEST ON BERLIN DIRECT ELECTIONS COULD NOT BE ENVISAGED AS A BONN GROUP AD REF DRAFT. THERE WOULD BE NO WAY FOR LONDON TO DO THE NECESSARY FINAL STAFFING BEFORE THE DECEMBER 8 SENIOR LEVEL MEETING, AND LONDON QUESTIONED WHETHER THE BONN GROUP WAS WISE TO MAKE THE ATTEMPT. IN ADDITION, LONDON HAD POINTED OUT THAT, TO PRESENT SENIOR OFFICIALS WITH A TEXT OF THIS KIND WOULD ALMOST CERTAINLY DRIVE THEM INTO THE SORT OF DETAILED CONSIDERATION TO WHICH THEY SHOULD NOT DEVOTE THEIR TIME. HITCH SAID HE WAS NEVERTHELESS PREPARED TO CONTINUE CONSIDERATION OF AN ILLUSTRATIVE TEXT ON THE UNDERSTANDING THAT THE BONN GROUP WAS NOT AIMING AT AD REF AGREEMENT BEFORE DECEMBER 8.

2. HENZE (FRG) STILL THOUGHT IT DESIRABLE TO HAVE A DRAFT WHICH SENIOR OFFICIALS COULD CONSIDER IN BRUSSELS. US AND FRENCH REPS AGREED WITH HITCH THAT IT WOULD BE UNDESIRABLE FOR THE SENIOR LEVEL MEETING TO GET BOGGED DOWN IN DRAFTING OF THIS SORT BUT SAW MERIT IN HAVING A LONG-FORM REPLY AVAILABLE IF THERE WERE A DISCUSSION OF THE QUESTION OF WHETHER IT WAS DESIRABLE TO GO ALL OUT IN ANSWERING THIS MOST RECENT SOVIET PROTEST.

3. BOISSIEU (FRENCH) THEN TABLED A REVISED DRAFT, WHICH RETAINED MUCH OF THE LANGUAGE OF THE US DRAFT (REF A) BUT IN A DIFFERENT STRUCTURAL ORDER. AGREEMENT IN PRINCIPLE WAS REACHED ON MANY PORTIONS OF THE DRAFT, WHICH IS REPORTED BELOW TO REPLACE THE TEXT CONTAINED IN REF (A). COMMENTS ON THE MAJOR ISSUES REMAINING TO BE RESOLVED FOLLOW THE RELEVANT PORTIONS OF THE CONFIDENTIAL

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TEXT.

4. BEGIN TEXT

A. THE GOVERNMENT OF THE UNITED STATES HAS CAREFULLY CONSIDERED THE STATEMENT OF THE MINISTRY OF FOREIGN AFFAIRS OF THE USSR OF NOVEMBER 16, 1976, IN CONSULTATION WITH THE GOVERNMENTS OF

FRANCE AND THE UNITED KINGDOM, AND HAS INSTRUCTED ME
TO STATE THE FOLLOWING:

B. THE SOVIET STATEMENT OF NOVEMBER 16 RAISES
ISSUES WHICH CONCERN THE ORIGIN OF ALLIED RIGHTS AND
RESPONSIBILITIES FOR BERLIN. THE US GOVERNMENT RECALLS
THAT THOSE RIGHTS AND RESPONSIBILITIES FIND THEIR
ORIGIN IN THE TOTAL DEFEAT OF THE THIRD REICH AND THE
SUBSEQUENT ASSUMPTION OF SUPREME AUTHORITY IN GERMANY
BY THE FOUR POWERS. THE UNITED STATES HAS SCRUPULOUSLY
OBSERVED THE QUADRIPARTITE AGREEMENTS AND DECISIONS

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WHICH WERE MADE ON THE BASIS OF THOSE ORIGINAL RIGHTS AND RESPONSIBILITIES, INCLUDING THOSE AGREEMENTS AND DECISIONS CONCERNING BERLIN.

C. THE SOVIET STATEMENT ALSO QUESTIONS THE EXTENT OF THOSE ALLIED RIGHTS AND RESPONSIBILITIES. ANY OF THE FOUR GOVERNMENTS IS OF COURSE ENTITLED TO LOOK TO THE OTHER THREE TO ENSURE THAT DEVELOPMENTS IN BERLIN DO NOT VIOLATE THE QUADRIPARTITE AGREEMENTS AND DECISIONS RELATING TO THE QUADRIPARTITE STATUS OF THE CITY AS A WHOLE. FOR THEIR PART, THE THREE POWERS, ACTING IN THE EXERCISE OF THEIR SUPREME AUTHORITY IN THE WSB, ENSURE THAT DEVELOPMENTS IN THOSE THREE
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SECTORS ARE CARRIED OUT IN A MANNER CONSISTENT WITH THE STATUS OF THE CITY; THE "LEGALITY" OF ACTIVITIES CARRIED OUT BY THE FRG IN THE WSB IS A QUESTION WHICH THE ALLIED KOMMANDATURA, ACTING IN THE EXERCISE OF ITS SUPREME AUTHORITY, DETERMINES ALONE AND AUTHORITATIVELY, SUBJECT ONLY TO QUADRIPARTITE RIGHTS AND RESPONSIBILITIES.

COMMENT: THE BONN GROUP WILL RETURN TO CONSIDERATION OF THIS PARAGRAPH AT THE NEXT MEETING. WE DO NOT YET HAVE A FORMULATION FOR RESOLVING THE CONFLICT BETWEEN STATING THAT THE THREE POWERS ALONE MAY DETERMINE WHAT AFFECTS SECURITY AND STATUS IN THE WESTERN SECTORS (AND THUS THAT THE SOVIET UNION HAS NO RIGHT OF CO-DETERMINATION), AND REAFFIRMING QUADRIPARTITE RIGHTS AND RESPONSIBILITIES WHICH CONTINUE TO GIVE THE THREE POWERS AT LEAST A LIMITED VOICE IN MATTERS IN EAST BERLIN.

D. TO THE EXTENT THAT THE SOVIET STATEMENT CONCERNS THE PROPOSED EXTENSION TO THE WSB OF THE ACT OF THE EUROPEAN COUNCIL OF SEPTEMBER 20, 1976, I RECALL AND REAFFIRM THE TERMS OF THE STATEMENT OF THE US GOVERNMENT OF SEPTEMBER 20, 1976. THE GOVERNMENTS OF FRANCE, THE UNITED KINGDOM, AND THE UNITED STATES HAVE AGREED THAT THIS ACT SHALL APPLY ALSO TO THE WSB, UNDER CONDITIONS DESCRIBED IN THAT STATEMENT; THEY CONFIRM THAT THE CONTINUED PARTICIPATION OF REPRESENTATIVES FROM BERLIN IN THE EUROPEAN ASSEMBLY CANNOT, IN SUCH CIRCUMSTANCES, CONSTITUTE A VIOLATION OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971.

E. (BEGIN FRENCH BRACKETS) THE GOVERNMENTS OF THE UNITED STATES, FRANCE AND THE UNITED KINGDOM IN 1952/54 AUTHORIZED THE FEDERAL REPUBLIC OF GERMANY,

UNDER CERTAIN SPECIFIED CONDITIONS, TO REPRESENT THE
INTERESTS OF THE WESTERN SECTORS OF BERLIN ABROAD
AND TO EXTEND TO THE WESTERN SECTORS OF BERLIN INTER-
NATIONAL AGREEMENTS AND ARRANGEMENTS WHICH IT CONCLUDED.
ONE OF THOSE CONDITIONS, OF COURSE, WAS THAT ACTIONS
TAKEN BY THE FEDERAL REPUBLIC OF GERMANY ON THE
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BASIS OF THAT DELEGATED AUTHORITY MUST NOT AFFECT ALLIED
RIGHTS AND RESPONSIBILITIES IN BERLIN OR MATTERS OF
SECURITY AND STATUS. ACTIONS IN THIS AREA ARE REVIEWED
BY THE ALLIED KOMMANDATURA TO ENSURE THAT THOSE
CONDITIONS ARE MET. (END FRENCH BRACKETS)

COMMENT: BOISSIEU OMITTED THE ABOVE PARAGRAPH
FROM THE US DRAFT IN HIS REVISED VERSION, ARGUING
THAT IT WAS NOT NECESSARY TO TREAT EVERY ASPECT
OF BERLIN PROBLEMS IN THIS REPLY. FRG AND UK
REPS, HOWEVER, JOINED US REP IN ARGUING THAT THE
ABOVE PARAGRAPH WAS USEFUL IN DEVELOPING THE LINE
OF REASONING FOR REFUTING THE SOVIET ARGUMENT
THAT EXTENSION OF THE EC TREATIES TO BERLIN WAS
"ILLEGAL" FROM THE BEGINNING AND WAS NOT RATIFIED
BY THE QA. THEY THOUGHT IT IMPORTANT
TO EXPLAIN THE ORIGINAL DELEGATION OF AUTHORITY
TO THE FRG IN THE FIELD OF REPRESENTATION TO
DEMONSTRATE THE POINT THAT EXTENSION OF THE EC
TREATIES WAS LEGAL AND THEREFORE NEEDED NO
RATIFICATION IN THE QA.

F. THE US GOVERNMENT RECALLS THAT, WHEN THE
AUTHORITIES OF THE THREE POWERS APPROVED THE EXTENSION
TO THE WSB OF THE TREATY OF 1957 AND OF OTHER EC
CONSTITUTIVE TREATIES, THE ALLIED KOMMANDATURA HAS,
IN CONFORMITY WITH THE ESTABLISHED PROCEDURES, TAKEN
THE NECESSARY STEPS TO ENSURE THAT THEIR APPLICATION
IN THE WSB DID NOT AFFECT ALLIED RIGHTS AND

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RESPONSIBILITIES, INCLUDING THOSE WHICH CONCERN MATTERS
OF SECURITY AND STATUS. THE APPLICATION OF THESE
TREATIES IN THE WSB UNDER THE PRESCRIBED CONDITIONS
IS IN NO WAY INCOMPATIBLE WITH THE STATUS OF BERLIN;
IT IS THEREFORE ERRONEOUS TO DESCRIBE IT AS ILLEGAL.

G. THE QUESTION OF WHETHER THE QUADRIPARTITE
AGREEMENT RETROACTIVELY SANCTIONED THE EXTENSION OF
THESE TREATIES TO THE WSB DOES NOT ARISE; THE FACT IS
THAT THEY WERE EXTENDED IN CONFORMITY WITH LONG-
ESTABLISHED PROCEDURES AND UNDER THE CONDITIONS
DESCRIBED ABOVE. THESE PROCEDURES AND CONDITIONS WERE
CONFIRMED IN THE QA.

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COMMENT: THE BONN GROUP WILL RETURN IN
CONNECTION WITH THE ABOVE PARAGRAPH TO THE QUESTION
OF HOW TO TREAT THE "EXISTING SITUATION"
ARGUMENT. DESPITE THE FACT THAT WE DID NOT USE

THAT ARGUMENT IN THE SEPTEMBER 20 REPLY, AND ARE NOT USING IT IN THE PRESENT DRAFT, IT MAY STILL BE POSSIBLE TO FIND A WAY OF STATING THAT THE SOVIETS DID NOT SUCCEED AT THE TIME OF THE QA IN TAKING BERLIN OUT OF THE EC AREA AND MAY NOT DO SO NOW.

H. THE STATEMENT OF THE MINISTRY FOR FOREIGN AFFAIRS REFERRED TO THE PASSAGE OF THE QA WHICH STATES THAT THE WSB CONTINUE NOT TO BE A CONSTITUENT PART OF THE FRG AND NOT TO BE GOVERNED BY IT. THIS HAS BEEN THE CASE SINCE THE FRG CAME INTO BEING. THE US GOVERNMENT DISAGREES, HOWEVER, WITH THE CONTENTION THAT THIS PROVISION OF THE QA IS THE BASIS OF THE QA OR IS THE SOLE DETERMINANT OF THE POLICIES OF THE FRG IN RELATION TO THE WSB. THE STATEMENT THAT THE TIES BETWEEN THE WSB AND THE FRG WILL BE MAINTAINED AND DEVELOPED IS INSEPARABLE FROM THE PASSAGE REFERRED TO ABOVE AND IS OF EQUAL IMPORTANCE.

I. BECAUSE THE FRG IS A MEMBER OF THE EC, THE PARTICIPATION OF THE WSB, UNDER CONDITIONS DESCRIBED ABOVE, IN THE ACTIVITIES AND DEVELOPMENTS OF THE EC IS AN ASPECT OF THE TIES BETWEEN THE WSB AND THE FRG; SUCH PARTICIPATION CANNOT AND WILL NOT HAVE THE EFFECT THAT THOSE SECTORS BECOME A CONSTITUENT PART OF THE FRG OR ARE GOVERNED BY IT.

COMMENT: THE FRG WILL REFLECT FURTHER ON THE ACCEPTABILITY OF THE ABOVE FORMULATION, WHICH IS A VARIANT OF THE SAME IDEA EXPRESSED IN THE US DRAFT. BECAUSE WE HAVE ALWAYS SPOKEN OF EXTENTION OF THE EC TREATY AS A FUNCTION OF THE FRG RIGHT OF REPRESENTATION, THE FRG WOULD WISH TO BE CERTAIN THERE ARE NO LURKING DANGERS IN ALSO DESCRIBING BERLIN'S PARTICIPATION IN THE EC AS AN ASPECT OF

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THE "TIES."

J. TO THE EXTENT THAT THE CONCERNS OF THE SOVIET UNION, AS EXPRESSED IN THE STATEMENT OF THE MINISTRY OF FOREIGN AFFAIRS OF NOVEMBER 16 AND THE ORAL EXPLANATIONS WHICH ACCOMPANIED ITS DELIVERY, ARE BASED ON SPECULATION ABOUT FUTURE DEVELOPMENTS TOWARD EUROPEAN UNION, THE GOVERNMENT OF THE UNITED STATES CONSIDERS IT UNNECESSARY TO COMMENT. IT WILL TAKE A POSITION EACH TIME IT IS PROPOSED THAT BERLIN BE ASSOCIATED WITH A PARTICULAR COMMUNITY DEVELOPMENT, SEEING TO IT IN THE EXERCISE OF THE SUPREME AUTHORITY WHICH IT SHARES WITH FRANCE AND

THE UNITED KINGDOM THAT NONE OF THESE DEVELOPMENTS
AFFECTS THE STATUS OF BERLIN.

K. THE US GOVERNMENT WILL CONTINUE TO ENSURE THAT
ALLIED RIGHTS AND RESPONSIBILITIES, INCLUDING THOSE
OF THE USSR ARE MAINTAINED AND THE QA PROPERLY
OBSERVED. IT THEREFORE REJECTS AS TOTALLY UNWARRANTED
THE REFERENCE TO PROTECTIVE ACTIONS CONTAINED IN THE
SOVIET STATEMENT.

COMMENT: THIS PARAGRAPH ALSO WILL BE REWORKED
AT THE NEXT MEETING.

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